

1086

No. 2950

United States
1086
Circuit Court of Appeals

For the Ninth Circuit.

JOSEPH J. SCOTT, as Collector of Internal Revenue of the United States for the First Collection District of California,

Appellant,

vs.

WESTERN PACIFIC RAILROAD COMPANY, and FRANK G. DRUM and WARREN OLNEY, JR., Receivers of the Property of the WESTERN PACIFIC RAILWAY COMPANY,

Appellees.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed

APR 13 1917

F. D. Monckton,
Clerk.



United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSEPH J. SCOTT, as Collector of Internal Revenue of the United States for the First Collection District of California,

Appellant,

vs.

WESTERN PACIFIC RAILROAD COMPANY,
and FRANK G. DRUM and WARREN
OLNEY, JR., Receivers of the Property of
the WESTERN PACIFIC RAILWAY COM-
PANY,

Appellees.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 169—IN EQUITY.

THE EQUITABLE TRUST COMPANY OF
NEW YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

**Order Fixing Time for Hearing Petition for Rulings
in Regard to Income Tax.**

Upon reading and filing the petition of Frank G. Drum and Warren Olney, Jr., Receivers in the above-entitled matter,—

IT IS ORDERED that the said petition be heard on Monday, the 29th day of May, 1916, at the hour of ten o'clock A. M. of said day, and that a citation issue out of and under the seal of this court directed to Joseph J. Scott, as Collector of Internal Revenue, to be and appear before this Court, to show cause why he should not accept the return of annual net income heretofore filed by said receivers; and further to show cause, if any he has, why this Court should not make and enter its judgment and decree finding and adjudging that the interest due and unpaid by the Western Pacific Railway Company for the fiscal year 1915 should not be held to be a proper deduction and that the said receivers are not

subject to the payment of any tax upon their income as such receivers.

Dated May 16th, 1916.

WM. C. VAN FLEET,
United States District Judge.

(Attached hereto is petition for rulings in regard to income tax.)

Receipt of a true copy thereof this 18 day of May, 1911, is hereby admitted.

PERRY EVANS,
Attorney for Def.

[Endorsed]: Filed May 18, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [1*]

*In the District Court of the United States, Northern
District of California, Second Division.*

EQ.—No. 169.

EQUITABLE TRUST COMPANY OF NEW
YORK, a Corporation,
Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY,
a Corporation, et al.,
Defendants.

*Page-number appearing at foot of page of original certified Transcript of Record.

Memorandum Opinion.

JARED HOW, for Plaintiff.

ALEXANDER R. BALDWIN, for Defendants.

JOHN S. PARTRIDGE and GARRET W. Mc-
ENERNEY, for the Receivers.

VAN FLEET, District Judge:

The question presented by the application of the receivers herein for instructions of the Court is whether the fund in the hands of the receivers, represented by the net proceeds in conducting the operations of the road while in their hands over and above the expense and authorized expenditures paid out by them, is subject to tax under the Federal Income Tax Act as net earnings of the corporation, and as such required to be returned by them to the Collector of Internal Revenue of this district for the purposes of such tax.

I am of opinion that the facts bring the case within the principles of *Pennsylvania Steel Co. vs. New York City Railway Co.*, 198 Fed. 775; and upon the authority of that case it is held that such fund is not subject to the tax.

The receivers will be governed accordingly, and an appropriate order to that end may be prepared by the attorney for the receivers and entered herein.

[[2]

[Endorsed]: Filed August 21, 1916. Walter B. Maling, Clerk. [3]

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 21st day of August, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 169—EQUITY.

THE EQUITABLE TRUST CO.

vs.

WESTERN PACIFIC RAILWAY CO. et al.

Order Instructing Receivers That No Payment of Any Income Tax Should be Made, etc.

The receivers' application for instructions of the Court in regard to income tax, heretofore submitted, being fully considered and the Court having filed its memorandum opinion, it is ordered that the receivers are instructed that no payment of any income tax should be made. Ordered that the order to show cause on the Collector of Internal Revenue be dismissed. [4]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

IN EQUITY—No. 169.

THE EQUITABLE TRUST COMPANY OF
NEW YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

**Petition for Appeal Filed December 14, 1916, in the
Southern Division of the Northern District of
the State of California.**

To the Honorable WILLIAM C. VAN FLEET,
District Judge, etc.

Joseph J. Scott, Collector of Internal Revenue of the United States, for the First Collection District of California, defendant, feeling himself aggrieved by the order made and entered in this cause on the 21st day of August, 1916, does hereby appeal from said order to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issued, as provided by law, and that a transcript of the record, proceedings and papers upon which said order was based, duly authenticated, may be sent to

the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

JNO. W. PRESTON,

United States Attorney,

ED. F. JARED,

Asst. United States Attorney,

Solicitors for Defendants.

[Endorsed]: Filed Dec. 14, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

IN EQUITY—No. 169.

THE EQUITABLE TRUST COMPANY OF
NEW YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

**Assignment of Errors Upon Appeal from Order
Made and Entered on August 21, 1916.**

And now on this, the 14th day of December, 1916, come the defendant by his solicitor, Ed. F. Jared, Assistant United States Attorney, and says that the order entered in the above cause on the 21st day of August, 1916, is erroneous and unjust to defendant.

I.

The Court erred in not dismissing the Petition for

Ruling in regard to Income Tax.

II.

The Court erred in assuming jurisdiction of the matter by substituting its judgment or discretion for that of the official entrusted by law with its execution.

III.

The Court erred in taking jurisdiction of the matter, as to whether the funds in the receivers' hands were subject to the income tax, as Congress has provided a way in which taxpayers may obtain relief from unjust assessment or from an illegal collection of taxes. [6]

IV.

The Court erred in holding that the funds in the hands of the receivers, represented by the net proceeds in conducting the operations of the road while in their hands, over and above the expense and authorized expenditures paid out by them was not subject to tax under the Federal Income Tax Act as net earning of the corporation.

V.

The Court erred in holding that the returns of the annual net income of the Western Pacific Railway Company for the year 1915, in the sum of \$1,408,034.99 filed by the receivers of the company, were not subject to the Federal Income Tax Act.

VI.

The Court erred in holding and instructing the receivers that no payment of any income tax should be made.

WHEREFORE the appellant prays that the said

order be reversed and that the said District Court for the Northern District of California, be ordered to enter a decree or order reversing the decision of the lower Court in said cause.

JNO. W. PRESTON,
 United States Attorney,
 ED. F. JARED,
 Asst. United States Attorney,
 Solicitors for Appellant.

[Endorsed]: Filed Dec. 14, 1916. W. B. Maling,
 Clerk. By J. A. Schaertzer, Deputy Clerk. [7]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

IN EQUITY—No. 169.

THE EQUITABLE TRUST COMPANY OF
 NEW YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
 et al.,

Defendants.

Order Allowing Appeal.

On motion of Ed. F. Jared, Assistant United States Attorney, solicitor and counsel for Joseph J. Scott, Collector of Internal Revenue of the United States, for the First Collection District of California, defendant,—

IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit

of the United States from the order and decree heretofore filed and entered herein, on August 21, 1916, be, and the same is hereby allowed, and that a certified transcript of the record relating to the said order and decree be forthwith transmitted to the said Circuit Court of Appeals.

Decemebr 14, 1916.

WM. C. VAN FLEET,
District Judge, Second Division.

December 14, 1916.

[Endorsed]: Filed Dec. 14, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [8]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 169.

THE EQUITABLE TRUST COMPANY OF
NEW YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

**Statement of Proceedings on Motion to Dismiss the
Petition for Rulings in Regard to the Income
Tax in the Above-Entitled Matter.**

BE IT REMEMBERED that on June 26, 1916, the motion of Joseph J. Scott, Collector of Internal Revenue, to dismiss the Petition filed by the re-

ceivers in the above-styled case, for the Court Rulings in the Income Tax, came on for hearing, Ed. F. Jared, Assistant United States Attorney, appearing on behalf of Joseph J. Scott, and John S. Partridge, appearing on behalf of the petitioners; thereupon the following proceedings were had:

Mr. Partridge presented and read to the Court the Petition for Rulings in Regard to Income Tax, which petition was, and is in the words and figures as follows:

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 169—IN EQUITY.

THE EQUITABLE TRUST COMPANY OF
NEW YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants. [9]

Petition for Rulings in Regard to Income Tax.

The petition of Frank G. Drum and Warren Olney, Jr., respectfully shows:

I.

That they are the duly appointed, qualified and acting receivers of the property of the Western Pacific Railway Company, one of the defendants in the above-entitled cause.

II.

That within the time allowed by law, your receivers filed, in accordance with law, with the Collector of Internal Revenue for this District, their income tax return, showing total gross income for the year ending December 31, 1915, of \$6,669,577.64, and total deductions of \$9,955,781.59. That said deductions were made up as follows:

Expenses General.....	\$4,786,203.45
Losses Sustained....	35,056.13
Depreciation....	95,760.41
Interest.....	4,694,238.94
Taxes Domestic.....	344,522.66

Total..... \$9,955,781.59

III.

That attached to said return was an explanatory note showing the facts in regard to the said interest deduction, as follows:

“WESTERN PACIFIC RAILWAY COMPANY,
FRANK G. DRUM & WARREN OLNEY,
JR., RECEIVERS.

6 (a) Interest Deductible.

Name or Kind of Obligation.	Amount of Principal.	Rate of Interest.	Amount of Interest.
First Mtge. Bonds	\$50,000,000.00	5%	\$2,500,000.00
Second “ “	25,000,000.00	5%	1,250,000.00
Notes issued to D. & R. G. R. R.			
Co. prior to January 1st 1915	15,400,452.89	5%	770,022.64
Prior to January 1st.	75,000.00	6%	4,500.00
“ “ “ “	2,285,096.73	7%	159,956.77
During year 1915	162,819.94	7%	9,759.53
	<hr/>		<hr/>
	\$92,923,369.56		\$4,694,238.94

Above interest due on indebtedness (all forms) of Western Pacific Railway Company, a corporation,

but no payments have been actually made inasmuch as the amount available for that purpose, viz.: \$1,408,034.99, and which would have been used for such purpose by the Western Pacific Railway Company is held in abeyance and is subject to disposition by order of the United States District Court in and for the Northern District of California, said Court being the [10] Court appointing receivers of the property of Western Pacific Railway Company.”

IV.

That after said income tax return had been forwarded to the Treasury Department, the said Treasury Department made its ruling as follows:

“TREASURY DEPARTMENT,
WASHINGTON.

CT—In re.

March 29, 1916.

1916 Return

Western Pacific Railway Co.

Joseph J. Scott, Esq.,

Collector of Internal Revenue,

San Francisco, California.

Sir:

This office is in receipt of your letter of the 22d instant, with which you forward return of annual net income of the Western Pacific Railway Company for the year 1915, filed by the receivers of the company, in order that a special ruling may be made as to the deduction 6 (a) “Interest paid.”

In reply you are informed that the memorandum attached to the return explains the interest deduction of \$4,694,238.94 as follows:

'Above interest due on indebtedness (all forms) of Western Pacific Railway Company, a corporation, but no payments have been actually made inasmuch as the amount available for that purpose, viz.: \$1,408,034.99, and which would have been used for such purpose by the Western Pacific Railway Company is held in abeyance and is subject to disposition by order of the United States District Court in and for the Northern District of California, said Court being the Court appointing Receivers of the property of Western Pacific Railway Company.'

From the above explanation, this office holds that no part of the interest deduction is allowable, as an allowable deduction for interest must represent the interest accrued and paid within the year for which the return is made. Such deductions must be confined to actual disbursements, in cash or its equivalent, that the liabilities discharged have been paid within the year.

Therefore, the interest deduction of \$1,694,238.94 will be disallowed, and, as the return shows a deficit of \$3,286,203.95, tax will be assessed on \$1,408,034.99.

The return will be retained in this office and in the event you receive this letter before forwarding your March list, you should report the corporation for assessment on that list, otherwise it should be reported on your April list.

Respectfully,

(S.) W. H. OSBORN,
Commissioner." [11]

V.

That your receivers are advised and believe, and therefore allege, that the said interest is properly deductible and that your receivers should not be compelled to pay any tax upon the surplus inasmuch as said surplus is less than the amount of the interest due and payable during the said fiscal year, and inasmuch as the said interest was not paid on account of the receivership.

WHEREFORE, your receivers pray that a citation issue out of and under the seal of this Court directed to Joseph J. Scott, Collector of Internal Revenue, directing him to appear before this Court upon a day to be set, then and there to show cause why the said statement should not be accepted; and your receivers further pray that this Court make and enter its judgment and decree finding that the said interest is a proper deduction and that your receivers should not be held to pay any income tax.

F. G. DRUM,
Petitioners.

JOHN S. PARTRIDGE,
Counsel for Petitioners.

State of California,
City and County of San Francisco,—ss.

Frank G. Drum, being first duly sworn, deposes and says: That he is one of the petitioners in the above-entitled cause; that he has read the foregoing petition and that the same is in all respects true.

FRANK G. DRUM.

Subscribed and sworn to before me this 16th day of
May, 1916.

[Seal] W. T. HESS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 18, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk.

Whereupon Mr. Jared presented and read the
motion to dismiss the said petition, which reads as
follows. [12]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

IN EQUITY—No. 169.

THE EQUITABLE TRUST COMPANY OF NEW
YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

**Motion to Dismiss Petition for Rulings in Regard to
the Income Tax.**

To F. G. Drum and Warren Olney, Jr., Petitioners,
and John S. Partridge, Counsel for Petitioners,
San Francisco, Cal.:

Take notice that upon the petition filed herein, the
Collector of Internal Revenue of this District, by the
United States Attorney, will on Monday, June 26,
1916, at 10 o'clock A. M., or as soon thereafter as

said counsel can be heard, at the courtroom of the above-entitled Court, move the said Court to dismiss the "Petition for Rulings in Regard to the Income Tax," filed in this cause with the proceedings had thereon, because it appears on the face of the Petition that this Court has no jurisdiction in said matter, for that:

First. The Court has been asked to make rulings that have been made by executive officers relative to matters which are confided to them by law;

"The Courts will refuse to substitute their judgments or discretion for that of the official entrusted by law with its execution. Interference in such case would be to interfere with the ordinary function of government."

La vs. McAdoo, 234 U. S., p. 634.

Rulings made by an executive department in pursuance of authority delegated by Congress have the force of law.

Wilkins vs. U. S., 96 F. 837.

Caha vs. U. S., 152 U. S. 211.

Ex parte Reed, 100 U. S. 13.

22 Op. Atty. Gen., 570.

Scope and effect of regulations of the Department,

In re Kollock, 165 U. S. 526.

43 Int. Rev. Rec. 170.

Second. That it appears on the face of the Petition that the interest due and unpaid by the Western Pacific Railway Company for the fiscal year 1915 is not a proper deduction; [13] that no part of this interest deducted is allowable, as allowable deduction must represent the interest *accrued and*

paid within the year for which the return is made. Such deductions must be confined to actual disbursements in cash or its equivalent.

Section B, line 23-25 and Section G, line 96—
of the Federal Income Tax Law.

JNO. W. PRESTON,
United States Attorney.

ED F. JARED,
Asst. United States Attorney.

The matter was fully argued by counsels, and thereupon the Court ordered that the matter be submitted.

That on August 21, 1916, a Memorandum Opinion of the said Court was made and filed, and thereupon an order was made and entered; the said Memorandum Opinion and order are as follows:

*In the District Court of the United States, Northern
District of California, Second Division.*

EQ.—No. 169.

THE EQUITABLE TRUST COMPANY OF NEW
YORK, a Corporation,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY, a
Corporation, et al.,

Defendants.

Memorandum Opinion.

JARED HOW, for Plaintiff,

ALEXANDER R. BALDWIN, for Defendants,

JOHN S. PARTRIDGE and GARRET W. Mc-
ENERNEY, for the Receivers.

VAN FLEET, District Judge.

The question presented by the application of the receivers herein for instructions of the Court is whether the fund in the hands of the receivers, represented by the net proceeds in conducting the operations of the road while in their hands over and above the expense and authorized expenditures paid out by them, is [14] subject to tax under the Federal Income Tax Act as net earnings of the corporation, and as such required to be returned by them to the Collector of Internal Revenue of this district for the purposes of such tax.

I am of the opinion that the facts bring the case within the principles of *Pennsylvania Steel Co. vs. New York City Railway Co.*, 198 Fed. 775; and upon the authority of that case it is held that such fund is not subject to the tax.

The receivers will be governed accordingly, and an appropriate order to that end may be prepared by the attorney for the receivers and entered herein.

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 21st day of August, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 169—EQUITY.

THE EQUITABLE TRUST CO.

vs.

WESTERN PACIFIC RAILWAY CO. et al.

The receivers' application for instructions of the Court in regard to income tax, heretofore submitted, being fully considered and the Court having filed its memorandum opinion, it is ordered that the receivers are instructed that no payment of any income tax should be made. Ordered that the order to show cause on the Calendar of Internal Revenue be dismissed. [15]

The above statement contains all of the evidence and proceedings relating to the hearing of the above matter.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the Receivers of the Western Pacific Railway Company and the Western Pacific Railway Company, and Joseph J. Scott, Collector of Internal Revenue, that the foregoing statement has been presented in time, and

that it be approved, allowed and settled by the Judge of the above-entitled court as correct in all respects, and that the same shall be made part of the record of the said case on appeal as required by Rule 75 of the Equity Rules of the Supreme Court of the United States;

AND IT IS FURTHER STIPULATED AND AGREED that the order of approval of said statement may be made outside of the jurisdiction of the above-entitled court.

Dated March 9, 1917.

JNO. W. PRESTON,
U. S. Attorney.

ED F. JARED,
Asst. U. S. Atty.,

Attorneys for Joseph Scott, Collector of Internal Revenue.

JOHN S. PARTRIDGE,
Attorney for Receiver of Western Pacific Railway Company.

A. R. BALDWIN,
Attorney for Western Pacific Railroad Company.

Order Approving and Settling Statement.

The foregoing statement, duly proposed and agreed upon by the counsels for the respective parties, is correct in all respects, and is hereby approved, allowed and settled and made a part of the record herein for the purpose of appeal.

Dated March 10th, 1917, at San Francisco, Cal.

FRANK H. RUDKIN,
United States District Judge.

[Endorsed]: Filed Mar. 10, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

UNITED STATES OF AMERICA.

*District Court of the United States, Northern
District of California.*

CLERK'S OFFICE.

IN EQUITY—No. 169.

THE EQUITABLE TRUST CO. OF NEW YORK

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.

Praeceptum for Transcript of Record.

To the Clerk of Said Court:

Sir: Please prepare certified copies of the following papers to be used on the appeal from the order made and entered in the above-entitled matter on August 21, 1916:

1. Order fixing time for hearing petition for Rulings in Regard to Income Tax.
2. Memorandum Opinion.
3. Order made and entered August 21, 1916.
4. Petition for Appeal from order, etc., of August 21, 1916.
5. Order Allowing Appeal.
6. Assignment of Errors.
7. Citation on Appeal.
8. Statement of the proceedings to be used on appeal.
9. Copy of this praecipe.

ED F. JARED,
Asst. U. S. Atty.,
Attorney for Defendant.

Service of the within Praeceptum by copy admitted this 15th day of Jan., 1917.

JOHN S. PARTRIDGE,
Attorney for Receivers.

A. R. BALDWIN,
Atty. for the Western Pacific R. R. Co.

[Endorsed]: Filed Jan. 15, 1917. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

*In the Southern Division of the United States
District Court, in and for the Northern District
of California, Second Division.*

No. 169—IN EQUITY.

THE EQUITABLE TRUST COMPANY OF NEW
YORK,

Plaintiff,

vs.

WESTERN PACIFIC RAILWAY COMPANY
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing seventeen (17) pages, numbered from 1 to 17, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the

same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record amounts to \$9.40; that said sum will be charged by me in my quarterly account against the United States, for the quarter ending March 31, 1917, and that the original citation issued in said cause is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 12th day of March, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [18]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Western Pacific Railroad Company and Frank G. Drum and Warren Olney, Jr., Receivers of the Property of the Western Pacific Railway Company, and John S. Partridge, Counsel for Receivers,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's

Office of the United States District Court for the Southern Division of the Northern District of California, 2d Division thereof, wherein Joseph J. Scott, Collector of Internal Revenue of the United States, for the First Collection District of California, is appellant, and you are appellee, to show cause, if any there be, why the order, judgment and decree rendered against the said appellant on August 21, 1916, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Southern Division of the Northern Dist. of California, 2d Div. thereof, this 14th day of December, A. D. 1916.

WM. C. VAN FLEET,
United States District Judge. [19]

State of California,
City and County of San Francisco,—ss.

David D. Jones, being duly affirmed, deposes and says: That he is, and was at the time of the service of the attached citation on appeal, a citizen of the United States, over the age of eighteen years; and that he personally served the above-mentioned citation on the Western Pacific Railway Company by leaving with A. R. Baldwin, Vice-president of said company, a copy of such citation at his office in the Mills Building.

DAVID D. JONES.

Subscribed and sworn to before me this 18th day of December, 1916.

[Seal] J. A. SCHAERTZER,
Deputy Clerk U. S. District Court, Northern District
of California.

[Endorsed]: In Equity—No. 169. Southern Division, United States District Court for the Northern District of California, Second Division. Joseph J. Scott, Collector of Internal Revenue, 1st Collection Dist. of California, Appellant, vs. Western Pacific Railroad Co. Frank G. Drum and Warren Olney, Jr., Receivers, and John S. Partridge, Counsel for Receivers. Citation on Appeal. Filed Dec. 16, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2950. United States Circuit Court of Appeals for the Ninth Circuit. Joseph J. Scott, as Collector of Internal Revenue of the United States for the First Collection District of California, Appellant, vs. Western Pacific Railroad Company and Frank G. Drum and Warren Olney, Jr., Receivers of the Property of the Western Pacific Railway Company, Appellees. Transcript of the Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed March 12, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

IN EQUITY—No. 169.

JOSEPH J. SCOTT, Collector of Internal Revenue,
Appellant,

vs.

FRANK G. DRUM and WARREN OLNEY, Jr.,
Receivers of the WESTERN PACIFIC
RAILWAY COMPANY et al.,
Appellees.

**Order Extending Time to and Including February
13, 1917, to File Record and Docket Cause.**

Good cause appearing therefor, it is ordered that the appellant in the above-entitled cause may have to and including February 13, 1917, within which to file the record on appeal and to docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated January 12, 1917.

WM. C. VAN FLEET,
United States District Judge, Northern District of
California.

[Endorsed]: In Equity—No. 169. In the United States Circuit Court of Appeals for the Ninth Circuit. Joseph J. Scott, Collector of Internal Revenue, vs. Frank G. Drum and Warren Olney, Jr., Receivers of the Western Pacific Railway Company, et al. Order Extending Time to File Record and

Western Pacific Railroad Company et al. 27
Docket Cause. Filed Jan. 12, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 169.

JOSEPH J. SCOTT, Collector of Internal Revenue,
Appellant,

vs.

FRANK G. DRUM and WARREN OLNEY, Jr.,
Receivers of the WESTERN PACIFIC
RAILWAY COMPANY et al.,
Appellees.

Order Extending Time to and Including February 13, 1917, to File Record and Docket Cause.

Good cause appearing therefor, it is ordered that the appellant in the above-entitled cause may have to and including February 13, 1917, within which to file the record on appeal and to docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated January 13, 1917.

W. W. MORROW,

Judge for the Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: In Equity—No.—. In the United States Circuit Court of Appeals for the Ninth Circuit. Joseph J. Scott, Collector of Internal Revenue, vs. Frank G. Drum and Warren Olney, Jr., etc. Order Extending Time to File Record and Docket Cause. Filed Jan. 13, 1917. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —.

JOSEPH J. SCOTT, Collector of Internal Revenue,

Appellant,

vs.

FRANK G. DRUM and WARREN OLNEY, Jr.,
Receivers of the WESTERN PACIFIC
RAILWAY COMPANY, et al.,

Appellees.

**Order Extending Time to and Including March 12,
1917, to File Record and Docket Cause.**

Good cause appearing therefor, it is ordered that the appellant in the above-entitled cause may have to and including March twelfth, 1917, within which to file the record on appeal and to docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated February 13th, 1917.

W. W. MORROW,

Judge, Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. —. In the United States Circuit Court of Appeals for the Ninth Circuit. Joseph J. Scott, Collector of Internal Revenue, Appellant, vs. Frank G. Drum et al., Receivers of the Western Pacific Railway Co. et al., Appellees.

Order Extending Time to File Record and Docket Case. Filed Feb. 13, 1917. F. D. Monckton, Clerk.

No. 2950. United States Circuit Court of Appeals for the Ninth Circuit. Joseph J. Scott, as Collector, etc., Appellant, vs. Western Pacific Railroad Company, et al., etc., Appellees. Three Orders Under Rule 16 Enlarging Time to March 12, 1917, to File Record Thereof and to Docket Case. Refiled Mar. 12, 1917. F. D. Monckton, Clerk.

